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DAY OF GENERAL DISCUSSION: "RIGHT TO EDUCATION (ARTICLES 13 AND 14 OF THE COVENANT)"

Monday, 30 November 1998

The right to education

Background paper submitted by World University Service (WUS)

GE.98-18154 (E)

Introduction

1. The discussion on the right to education seems to have concerned itself largely with defining this right: Is it a social right, an economic right or, even worse, a cultural right? A cross-sectoral, interdisciplinary right? An empowerment right? Irrespective of what label is attached to it, the interpretation and stocktaking of the right to education deserves the place it has received on various United Nations agendas recently. We think that all interpretations should keep in mind the spirit of the International Covenant on Economic, Social and Cultural Rights: the parties to the treaty, i.e. States should provide for schools and teachers.

2. Stock-taking of the legal enforceability of the right to education has focused on a general lack of case law, particularly with respect to States parties' "positive obligations". Those who choose to attach value to the United Nations human rights system may share our opinion that international law, as enshrined in United Nations treaties, takes precedence over regional and/or national legislation.

3. The Committee on Economic, Social and Cultural Rights is the international body monitoring the right to education as it is defined in the Covenant, and although the States parties' reports are the only means currently at its disposal for doing so, there is no reason why its monitoring capacities could not be strengthened. Also, in view of the possible adoption of an optional protocol to the Covenant (establishing an individual complaints procedure), it is hoped that economic, social and cultural rights will acquire the same status as civil and political rights and that the Committee will receive the judicial powers that the protection of these rights requires.

4. From the point of view of WUS, being an international NGO campaigning for the right to education, with a presence on all continents, any discussion of the right to education should be concerned in the first place, if not exclusively, with the situation that we want to remedy: the fact that millions of children are deprived of their basic right of access to education, the majority of them being girls. It is our objective to contribute towards better monitoring of the implementation of the right to education and academic freedom. We are therefore very pleased to be able to contribute to the Committee's Day of General Discussion on the right to education.

"Monitorability" of the right to education

5. Some aspects of the right to education can be viewed as being more or less equivalent to civil and political rights (e.g. non-discrimination, freedom of parental choice, liberty to establish educational institutions) and are consequently easier to monitor. There is not much room for different interpretations. Other aspects might be easier to monitor for other reasons (e.g. the degree of consistency between national legislation and the Covenant), but could be included more explicitly in the Committee's guidelines for States parties' reports.

6. In principle, the possibility of filing individual complaints could provide a basis for strengthening the monitoring of the "monitorable" aspects of the right to education (freedom and non-discrimination). Besides, we have

noticed that the Committee welcomes reports from NGOs and that it does incorporate issues which fall in the above-mentioned category both in its questions and in its concluding observations, a line of action which is acknowledged and appreciated by WUS.

Monitoring positive State action

7. That leaves us with those aspects of the right to education that could be characterized as the "core" aspects in terms of economic, social and cultural rights. These aspects are referred to in existing literature as "positive State obligations" (Fons Coomans, "Core Contents of the Right to Education", Academic Freedom IV, World University Service, London/Amsterdam, 1996, p. 4). The question as to whether the State is fulfilling its obligations to "the maximum of its available resources" (art. 2 (1) of the Covenant) is, of course, the most difficult one. Which indicators are to be chosen? This is where the discussion on monitoring the right to education seems to have come to a halt some years ago, and where some NGOs, WUS among them, would like to pick it up again. In this regard, we recall Commission on Human Rights resolution 1995/15 concerning, inter alia, the holding of seminars on indicators to measure achievements in the progressive realization of economic, social and cultural rights.

8. There are a variety of international instruments available that may be helpful in the selection of indicators, notably UNESCO recommendations and ILO conventions, some of which are already referred to in the Committee's guidelines; others might be considered for inclusion as well. See, for example, Education International's Barometer on Education (Brussels, 1998), in which a selection of indicators has been employed. UNESCO's International Commission on Education for the Twenty-first Century (Editions Odile Jacob, Paris, 1996) recommended that States earmark at least 6 per cent of their GNP for education. It seems legitimate for the Committee on Economic, Social and Cultural Rights to make a reference to this UNESCO indicator and benchmark in its guidelines.

9. Although the issue of academic freedom is only slightly touched upon in the Covenant (art. 15, para. 3), we think that a free academic climate is important for the overall quality of the educational sector and justifies a reference to UNESCO's recommendation concerning the status of higher-education teaching personnel (1997). This recommendation does address academic freedom and institutional autonomy, and proclaims member States' obligation to protect higher education institutions from threats to their autonomy coming from any source.

10. Some very concrete questions might be incorporated in the guidelines, serving to specify States parties' obligation to ensure compulsory primary education, free of charge:

(a) Has the Government eliminated all direct and indirect charges (like compulsory uniforms) for primary school?

(b) Have parents been informed that it is compulsory to send their children to school?

(c) Have measures been taken to encourage regular attendance? (referring to the Convention on the Rights of the Child, art. 28 (1e.)).

11. In addition to the examples mentioned above, the Committee could adopt some "core" indicators which should allow for comparison between countries and over time. Literature on this issue suggests that the sheer amount of statistical data required will make the monitoring process virtually impossible (Robert E. Robertson, "Measuring State compliance with the obligation to devote the 'maximum available resources' to realizing economic, social and cultural rights", Human Rights Quarterly, vol. 16, November 1994, p. 694); therefore, the number of indicators should be very limited. No country, including those with budget deficits, should escape criticism for decreasing the percentage of expenditure devoted to education. The indicators could be linked to specific phrasing in the Convention (e.g. "the full realization of this right" means that the net enrolment rate should be 100 per cent. This would entail a much more specific request for certain statistical data from States parties. To be able to interpret the figures, they should be related to population statistics, which should be provided as well.

Monitoring the quality of education

12. The relationship between financial resources and quality is not necessarily straightforward: the amount of money spent on education does not always reflect the quality of the education. Especially in affluent countries, financial cutbacks in education budgets sometimes seem to have served as an incentive to creativity in the educational sector and better performance, although the long-term effects remain to be seen. There is, however, an undeniable relationship between the quality of education and the working conditions of the teachers. For children, quality education means:

(a) The teacher should respect the mental and physical integrity of the children and be open to their concerns;

(b) The teacher should be capable of maintaining discipline by gaining the respect of the children;

(c) The teacher should inspire the children to seek knowledge and wisdom.

Teachers with the above-mentioned qualities should be granted the highest respect and cooperation. The achievement of these goals is not directly linked to material visible resources. What is needed most of all is time to pay attention to every child. The pupil/teacher ratio is the best indicator of quality that can be measured.

13. The validity of the teacher/pupil ratio as an indicator of educational quality is, however, being questioned by some experts. Research results can be found to sustain the opposite position. After years of growing class sizes in the Netherlands educational policy makers and teachers and parents found themselves at opposite poles in the debate, but in the end the teachers' protests could not be ignored. It may be possible to teach 40, 50 or 60 children in one class, but a teacher can never guarantee the same quality and

personal attention as can be given by a teacher teaching 30 children. Education should be directed to the full development of the human personality and the sense of its dignity (article 13 (1) of the Covenant). It should not be an exercise in discipline.

14. States parties' reports should indicate whether the teaching of human rights is incorporated in curricula and, if yes, at which level(s)?

Some comments on the freedom of education

15. The crucial distinction between public and non-public schools is the freedom of the latter to select their pupils. Parental control over the educational policies of the school should not include an authorization to deny access to certain pupils. In the Netherlands there has been a system of State-funded "special" schools (established and run by parents, mostly Protestants and Catholics) since the beginning of this century. An increasingly high degree of secularization in the Netherlands led at first to empty "special" schools, especially in urban areas, until parents noticed that the pupil/teacher ratios in those schools was much lower. They continue to exist, although their only distinctive feature is their power to control class sizes.

16. Non-public schools are, however, an escape mechanism for those who only pay lip-service to the notion of equal opportunities. If equal opportunities are to be guaranteed and a segregated society is to be prevented, private schools should not be allowed to refuse access to any pupil, just like public schools. For purposes of creating mutual tolerance, it would be preferable to have parents participate in the governing bodies of public schools and to enjoy their right to choose an education for their children in that way. Parents of different religious persuasions, different cultures, ethnicities, etc., would be forced to set an example for their children by cooperating in a constructive manner, thus learning to live together.